



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

*86 Chambers Street  
New York, New York 10007*

February 7, 2020

By ECF

Honorable Sarah Netburn  
United States Magistrate Judge  
United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: *In re Terrorist Attacks of September 11, 2001*, 03 MDL 1570 (GBD) (SN)

Dear Judge Netburn:

This Office represents the Federal Bureau of Investigation ("FBI"), in the above-referenced matter. We write respectfully to request an extension of the deadline for the FBI to file its motion papers in support of its cross motion and in opposition to Plaintiffs' January 15, 2020, motion to compel. The FBI's motion papers are currently due on February 12, 2020,<sup>1</sup> and we request that the deadline be extended to March 18, 2020. While the FBI regrets having to seek this substantial extension of time, the extension is necessary to allow the FBI and other government agencies to complete their review and evaluation of the complex and sensitive issues presented by the large volume of classified information at issue in this motion sequence.

This Office and the FBI have been working diligently for more than two months to prepare the documents in support of the FBI's upcoming filing, but the project has proven to be a massive undertaking. The FBI is preparing voluminous classified and unclassified declarations to explain the harms that may be caused by the release of any of the redacted or withheld information contained in 60 FBI documents at issue (as compared to the one FBI document that was at issue in the September 2019 assertion of the state secrets privilege). These submissions will also address the search methodology used to respond to Plaintiffs' Touhy request and subpoena to the FBI, and substantiate the decisions to withhold certain information on the basis of various privileges, potentially including the state secrets privilege. The FBI is responsible for addressing the majority of the methodological and privilege issues, and anticipates submitting declarations from the Attorney General of the United States and a senior FBI official to support those assertions. But the documents at issue here also involve the equities of the United States intelligence community, which has required high-level coordination; we also anticipate filing a declaration from the Acting Director of National Intelligence in support of other withholdings in the disputed documents.

The number of documents at issue in these motions, and the number of withholdings to be addressed in the declarations, have made the drafting of the voluminous supporting

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<sup>1</sup> The original deadline for the FBI's memorandum of law was February 7, 2020, but that deadline was extended twice when Plaintiffs sought and received short extensions of their original deadline to file their motion to compel. *See* Dkt. Nos. 5481, 5516.

submissions even more time consuming than anticipated, despite the substantial efforts by multiple government personnel. The breadth and complexity of the submissions also require additional time for review and determination by senior officials. As the Court is aware, all of these matters must be considered at the highest levels of each agency—the Department of Justice process for approval of the assertion of the state secrets privileged involves personal review by multiple senior officials, including the Attorney General himself—before they can be submitted for Your Honor’s consideration.

This process has been further complicated by a significant and recent change in the FBI leadership that has been most actively engaged in this matter. Michael McGarrity, the FBI Assistant Director for the Counterterrorism Division, a key decision-maker who also served as the FBI’s declarant for the September 2019 assertion of the state secrets privilege in this case, retired on November 30, 2019. A new Assistant Director for the Counterterrorism Division was named in January 2020; however, she is scheduled to start in that role on February 18, 2020. In addition, the Executive Assistant Director of the FBI’s National Security Branch—the official immediately senior to the Assistant Director for the Counterterrorism Division, who was also engaged in this matter—retired on January 31, 2020. An acting Executive Assistant Director of the National Security Branch started in that role earlier this week and a permanent Executive Assistant Director has yet to be named. Both of the newly appointed key decision-makers will need time to get up to speed on this case, the FBI’s positions, and the documents over which the FBI is asserting privileges, so that they can make informed determinations as to how to proceed.

This is the Government’s first request for an extension of its deadline to file its motion papers in support of its cross motion and in opposition to Plaintiffs’ January 15, 2020, motion to compel. Counsel for plaintiffs have advised that they do not consent to the requested extension, and that they intend to file a response to this letter motion.

If the Court grants the FBI’s request for an extension, the revised schedule, with corresponding extensions for the remainder of the briefing deadlines, would be as follows:

- The FBI’s motion papers in support of its cross motion and in opposition to Plaintiffs’ January 15, 2020, motion to compel shall be filed no later than March 18, 2020 (*previous deadline: February 12, 2020*);
- Plaintiffs’ opposition to the FBI’s cross motion and in further support of their motion to compel shall be filed no later than April 1, 2020 (*previous deadline: February 26, 2020*); and
- The FBI’s reply in further support of its cross motion shall be filed no later than April 15, 2020 (*previous deadline: March 11, 2020*).

We thank the Court for its consideration of and attention to this matter.

Respectfully submitted,

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cc: All counsel of record via ECF